UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date
August 14, 2000, at 10:00 a.m.

In re	:	
	:	Chapter 11
RANDALL'S ISLAND FAMILY GOLF	:	Case Nos. 00-41065 (SMB)
CENTERS, INC., *et al.*,	:	through 00-41196 (SMB)
	:	(Jointly Administered)
Debtors.	:	

SUPPLEMENTAL OBJECTION OF IRVIN AND EVELYN DEGGELLER, IRVIN DEGGELLER REVOCABLE TRUST OF 1994, AND EVELYN DEGGELLER REVOCABLE TRUST OF 1994 TO MOTION FOR ORDERS PURSUANT TO SECTIONS 105, 363 AND 1146 OF THE BANRKUPTCY CODE AND BANKRUPTCY RULES 2002, 6004, 6006 AND 6007 (I)(A) AUTHORIZING AND APPROVING (I) SALE OF CERTAIN FEE-OWNED PROPERTIES, (II) ASSUMPTION, SALE AND ASSIGNMENT OF CERTAIN LEASEHOLD INTERESTS, AND (III) SALE OF RELATED PERSONAL PROPERTY, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS AND EXEMPT FROM ANY STAMP, TRANSFER, RECORDING OR SIMILAR TAX, (B) APPROVING CERTAIN SALE PROCEDURES TO BE USED IN CONNECTION WITH SUCH SALES, (C) APPROVING THE FORM OF SALE AND ASSIGNMENT AGREEMENTS, (D) AUTHORIZING THE PAYMENT OF BROKERS' FEES IN CONNECTION WITH SUCH SALES, (II) IN THE EVENT THAT PROPERTIES REMAIN UNSOLD AT THE CONCLUSION OF THE OMNIBUS SALE HEARING, AUTHORIZING AND APPROVING THE ABANDONMENT OF UNSOLD FEE-OWNED PROPERTIES AND THE REJECTION OF UNSOLD LEASEHOLD INTERESTS, AND (III) SCHEDULING AN EXPEDITED HEARING TO CONSIDER SHORTENIGN THE TIME FOR, FIXING THE DATE, TIME AND PLACE FOR, AND APPROVING THE FORM AND MANNER OF NOTICE AND HEARING ON SUCH SALES

TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

Irvin and Evelyn Deggeller, individually and as trustees of the Irvin Deggeller Revocable Trust of 1994 and the Evelyn Deggeller Revocable Trust of 1994 (collectively, "Landlord"), by their attorneys, Robinson Brog Leinwand Greene Genovese & Gluck PC, supplement their objection filed on July 28, 2000 (docket no. 211) (the "Objection"), to the *Motion for Orders Pursuant to Sections*

105, 363 and 1146 of the Banrkuptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 6007 (i)(A) Authorizing and Approving (i) Sale of Certain FeeOwned Properties, (ii) Assumption, Sale and Assignment of Certain Leasehold Interests, and (iii) Sale of Related Personal Property, Free and Clear of Liens, Claims, Encumbrances, and Interests and Exempt from any Stamp, transfer, Recording or Similar Tax, (B) Approving Certain Sale Procedures to be Used in Connection with Such Sales, (C) Approving the Form of Sale and Assignment Agreements, (D) Authorizing the Payment of Brokers' Fees in connection with Such Sales, (II) in the Event that Properties Remain Unsold at the Conclusion of the Omnibus Sale Hearing, Authorizing and Approving the Abandonment of Unsold FeeOwned Properties and the Rejection of Unsold Leasehold Interests, and (III) Scheduling an Expedited Hearing to Consider Shortenign the Time for, Fixing the Date, Time and Place for, and Approving the Form and Manner of Notice and Hearing on Such Sales (the "Motion") and seek the entry of an order denying the Motion with respect to the debtor, Blue Eagle of Florida, Inc. (the "Debtor") and the Debtor's lease of certain non-residential real property from Landlord. In support thereof, Landlord states:

1. On July 19, 2000, the Debtor and its affiliates (the "Debtors") filed the Motion and scheduled a hearing to be held on July 31, 2000, to consider the approval of auction procedures as well as the sale, by public auction, of the Debtor's interests in certain owned and/or leased properties (the "Sale Properties").

2. Landlord is the fee owner of certain real property and the improvements thereon, including a nine-hole, par 3 golf course located in Stuart Florida which has been identified by the Debtors as one of the Sale Properties.

3. As set forth in more detail in the Objection, Landlord objected to the proposed sale procedures upon the ground that they failed to afford Landlord sufficient notice or opportunity to protect and defend its rights pursuant to, *inter alia*, section 365 of the Bankruptcy Code. The Objection focussed on the need for Landlord to receive timely information concerning the proposed cure of any outstanding defaults, and the provision of adequate assurance of future performance.

4. Landlord incorporates the Objection herein for all purposes.

5. At the July 31, 2000, hearing, the Debtor announced that it would not go forward with the proposed auction sale of the Sale Properties even though parties had travelled to the hearing from as far away as California and Europe, to bid on specific properties.

6. Instead, the Debtor announced at the July 31, 2000, hearing that (i) it had reached agreement with KLAK Golf, L.L.C. ("KLAK") for the sale by the Debtors and the purchase by KLAK, of substantially all of the Sale Properties and (ii) the hearing was to be adjourned while the Debtors and KLAK finalized the terms of their agreement.

7. During the interim, the Debtor has provided counsel with a copy of an *Agreement of Sale* between the Debtors and KLAK.

8. KLAK is a limited liability company, incorporated in Delaware. Upon information and belief the ownership of KLAK is split among five entites: Lubert-Adler Real Estate Fund II, L.P, Lubert-Adler Real Estate Parallel Fund II, L.P., and LubertAlder-Capital Real Estate Fun, II (collectively, "Lubert Adler"), Klaff Realty LP ("Klaff") and Kemper Sports Management ("Kemper").

9. The Debor has provided a lengthy packet of "information" consisting of : (i) a report on the audited financial statements of Luper-Adler, (ii) a corporate profile of Klak, and (iii) a corporate profile of Kemper.

10. The "so-called" corporate profiles consist almost entirely of "fluff pieces" i.e. copies of magazine articles and brochures none of which provide reliable economic information from which Landlord can determine whether adequate assurance can be provided by those..

11. Further, the "so-called" audited financials of Luper-Adler do not contain the signature or, for that matter, even the name of the accountant or accounting firm that prepared them, and are accordinly not admissible as evidence of Luper-Adler's ability to provide adequate assurance.

12. In any event, the aforementioned documents do not satisfy the adequate assurance requirements of the Bankruptcy Code, because the financial wherewithal of KLAK's equity holders is NOT at issue in this case. Nothing submitted by the Debtor suggests that any of KLAK's equity holders has any obligation to fund any amounts due to the Landlord to cure existing defaults or provide adequate assurance with respect to the promp cure of furure debaults..

13. The Debtors have failed to provide parties with a copy of the Operating Agreement for KLAK, from which parties may determine whether Luber-Adler, Klaff and Kemper have any obligation to satisfy shortfalls suffered by the Debtor with respect to adeuqate assurance payments.

14. The Debtor's have failed to provide any *pro forma* financial information concerning KLAK, so Landlord can not determine whether KLAK has any assets at all.

15. There is an additional reason that the Debtors have failed to provide any information from which adequate assurance can be provided: under the terms of the Agreement of Sale, it is

impossible to determine to whom the Debtor's may be required to assign any of their leasehold interests.

16. Article 9 of the so-called "Agreement of Sale" provides Purchaser with an opportunity, though October 9, 2000, to determine "which of the Leases it desires to acquire or to cause its designee to acquire. . . or reject."

17. In short, KLAK is not necessarily purchasing an assignment of leases - it is purchasing the right to flip some of the leases to as yet unidentified entities, and cherry-pick the remaining leases, assuming some and rejecting others in its sole discretion.

18. Nothing in the Motion suggests that the Debtor is seeking to sell such a right. The Motion suggests that the Debtor is simply seeking to assign its interests in the Sale Properties.

19. As set forth in the Agreement of Sale, as KLAK determines which leases it wishes to assume and which it wishes to reject, the Debtors shall be required to file separate montions approving each assignment or rejection.

20. The proposed procedure leaves Landlord in a limbo never intended by Congress. Because Landlord does not know at this time whether it's Lease is actually being assumed, assigned or rejected pursuant to the Motion, as modified by the *Agreement of Sale*, it is unclear when Landlord should be required to object.

21. To the extent that an assignment to KLAK is sought, then Landlord objects to such assignment until Landlord has had an opportunity to (i) review KLAK's financial wherewithal (as opposed to the finances of its individual equity holders), (ii) determine whether KLAK can provide adequate assurance of future performance, and (iii) obtain an appropriate determination from this Court regarding such issues.

22. Similarly, to the extent that the Debtor seeks to sell KLAK the right to designite alternative assignees, then Landlord objects to such assignment until Landlord has had an opportunity to (i) review such alternative assignee's financial wherewithal, (ii) determine whether such entity can provide adequate assurance of future performance, and (iii) obtain an appropriate determination from this Court regarding such issues.

DISCUSSION

23. Landlord objects to the relief requested by the Debtors to the extent that such relief deprives Landlord of its right to receive (i) the cure or the adequate assurance of the prompt cure of presently existing defaults, (ii) compensation for or adequate assurance of compensation for actual pecuniary loss resulting from existing defaults, and (iii) adequate assurance of future performance under the Lease. Satisfaction of these rights is a condition precedent to approval of the Motion. 11 U.S.C. § 365(b)(1); *cf. In re Wingspread Corp.*, 116 B.R. 915 (Bankr. S.D.N.Y. 1990).

24. In that connection, Landlord believes that any order approving the assumption and assignment of the Lease should not be entered until Landlord has had a reasonable opportunity to assess the ability of any proposed assignee to cure past defaults, compensate Landlord for pecuniary losses and provide "adequate assurance" of future performance within the meaning of sections 365(b)(1) and 365(b)(3) of the Bankruptcy Code.

CONCLUSION

WHEREFORE, Landlord seeks the entry of an order denying the Motion and granting such other and further relief as is just and appropriate.

Dated: New York, New York
August 11, 2000

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By: /s/ Michael S. Schreiber
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